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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,235	03/03/2004	Eve Gambla		4672

7590 08/15/2007  
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EXAMINER
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FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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08/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/792,235

Applicant(s)

GAMBLA ET AL.

Examiner

Robert M. Fetsuga

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. It is noted claim 6 does not comply with 37 CFR 1.121 in that the claim has been canceled via the amendment filed January 26, 2007.

2. Claim 3 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b).

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "six inches to twenty four inches" feature set forth in claim 1, "substantially annular" and "perpendicular" features set forth in claim 2, and subject matter set forth in claim 9, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant did not substantively address this objection in the response filed July 11, 2007.

4. Claims 2 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 2 recites a "substantially annular" flange. The flange 20 does not appear to be "annular", and this use of the term is repugnant to the meaning thereof.

Applicant argues at pages 5-6 of the response the flange "encircles the wall of the shield", and can therefore be considered annular. The examiner can not agree. The flange 20 extends, in two separated sections (Fig. 2), around the semi-elliptical (cl. 1, for example) wall 12,18. The geometry of "semi-elliptical" is quite different than annular.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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6. Claims 1, 2, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Masters et al.

The Masters et al. (Masters) reference discloses a spray shield comprising: a wall 101; a flange 113; and a domed top (illustrated), as claimed. Re claim 1, the wall height appears to be within the recited range (Fig. 4). Re claim 2, the flange is "substantially annular" in the same sense as with applicants' disclosed invention. Re claim 7, the wall extension appears to be within the recited range (col. 2 lns. 15-17).

Applicant argues at pages 6-7 of the response the flange of the Masters shield is different than the claimed flange. The examiner can not agree. The flange of Masters and that of applicant's disclosed invention are substantially identical. This is evident from a comparison of Fig. 4 in Masters with Fig. 1 of the instant application. Applicant argues at page 7 of the response the flange of Masters is not "annular" as recited in claim 2. The examiner can not agree. The flange of Masters is generally C-shaped, as acknowledged by applicant, which is closer to an "annular" shape than the flange actually disclosed by applicant. Applicant's argument at pages 7-8 of the response concerning claim 4 is considered moot as not reflecting the actual substance of the claim language. Applicant's argument at page 8 of the response concerning claim 7 is unavailing.

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7. Claims 1, 2, 4, 5 and 7-9 are rejected under 35 U.S.C.

103(a) as being unpatentable over Masters and Gambla et al.

Re claims 1 and 7, the choice of proportions would appear obvious choices to be made.

Re claim 5, although the wall of the Masters spray shield does not include a handle, as claimed, attention is directed to the Gambla et al. (Gambla) reference which discloses an analogous spray shield which further includes a wall 124 having a handle 112. Therefore, in consideration of Gambla, it would have been obvious to one of ordinary skill in the spray shield art to associate a handle with the Masters wall in order to facilitate manipulation.

Re claim 8, although the wall of the Masters spray shield does not include an image, as claimed, attention is again directed to Gambla which additionally discloses a wall 124 having an image 120. Therefore, in further consideration of Gambla, it would have been obvious to one of ordinary skill in the spray shield art to associate an image with the Masters wall in order to provide entertainment.

Applicant's argument at pages 8-9 of the response is moot as the Gambla reference qualifies as prior art under 35 USC 102(b). Applicant has not otherwise substantively addressed this ground of rejection.

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8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action.

In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to

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Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751